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In the
Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-837

BRADCO OIL & GAS COMPANY,

Petitioner

VERSUS

YOUNGSTOWN SHEET & TUBE COMPANY,

Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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MAY IT PLEASE THE COURT:

Respondent, Youngstown Sheet & Tube Company, received service of a copy of the petition for Writ of Certiorari on January 26, 1977, and, therefore, submits this brief in opposition thereto as timely.

I. *Rule 19.*

A review of the decision of the United States Court of Appeals, Fifth Circuit (Appendix D) establishes that petitioner has not made a showing that the Court of Appeals "has decided an important state. . .question in a way in conflict with applicable state. . .law."

To the contrary, the decision of the Fifth Circuit has correctly applied the most recent applicable Louisiana law. *Weber vs. Fidelity and Casualty Insurance Co.*, 259 La. 599, 250 So. 2d 754 (1971)

II. *Petitioner's Factual Representations:*

Petitioner, Bradco, has incorrectly represented to the Court that it was "accepted industry practice" and a "rule in the oilfield industry" that if hydrogen sulphide (H_2S) could not be detected by odor, it should not be considered a problem and no analysis of well fluids were required. Bradco has further not accurately represented the actual knowledge of its petroleum engineers who knew without being "warned" that the pipe they selected for use in the gas well was subject to embrittlement and failure should it be exposed to H_2S.

The District Court found (Findings of Fact):

"However, testimony adduced at the trial reflects that problems involving hydrogen sulfide in regard to deep wells are becoming more evident and API (American Petroleum Institute) recommends that all new areas should be tested." (FF16, Appendix A-8)

"It is a *well known fact* in the industry that if a well contains traces of hydrogen sulfide, P-105 tubing should not be used for all ranges of P-105 tubing is subject to hydrogen sulfide embrittlement." (FF21, Appendix A-9)

"Under the facts of this case, we find that defendants had no duty to warn Bradco that P-105 tubing was dangerous for use in a hydrogen sulfide environment. There is nothing in the evidence to indicate that defendant had any knowledge or could reasonably anticipate that Bradco would use

high strength P-105 tubing in a hydrogen sulfide environment.

Bradco, through its employees and/or agents, designed and supervised the drilling of Libby and Blouin No. 1 well. It was their duty to select suitable materials for the well and to acquaint themselves with all scientific information regarding the work, such as the corrosion potential of the tubing and the entire chemical composition of the soil. The means of knowledge are equivalent to knowledge, under the law. Thus, Bradco is charged with knowledge that hydrogen sulfide in minute quantities can be destructive to P-105 tubing; that at least minute quantities of hydrogen sulfide exist South Louisiana; and that gas composition tests should be made to exclude the presence of hydrogen sulfide before high strength, high grade P-105 tubing is used. (FF30, Appendix A-13)

The Fifth Circuit held:

"The district court's extensive fact-findings are supported by the record and in granting judgment for the defendant, the court correctly applied the relevant Louisiana tort law principles." (Appendix D-2)

"Bradco personnel *admitted* that they generally recognized the potential hazard of H_2S embrittlement with the P-105 pipe they themselves specified. Indeed, the problem has been discussed in industry publications and developers had been warned by the American Petroleum Institute to pre-test new areas, such as the one in which this

> well was drilled, for the potentially corrosive substance. . .the district court could conclude that Bradco as an experienced oil and gas producer was chargeable with the knowledge that even trace quantities of H_2S could create a hazard."
> (Appendix D-3)

The conclusion by the Fifth Circuit of actual knowledge of the hazard is of course well supported by the evidence. Bradco's petroleum engineer in charge of drilling the well testified (Original Record 260)

> Q. "Now, if you had any idea or any information that the Libby & Blouin Number 1 Well contained *traces* of hydrogen sulfide, would you have used the P-105 pipe?"
>
> A. "No, sir, I would not have."
>
> Q. "Tell the Court why."
>
> A. "Because P-105 is subject to embrittlement from hydrogen sulfide."

Thus, the evidence as recited by the courts below establish actual as well as constructive knowledge of the very information to which Bradco now claims it was entitled to by way of a warning. On this issue, the Fifth Circuit again applied relevant Louisiana law. *Thibodaux vs. McWane Cast Iron Pipe Co.*, 381 F. 2d 491 (5th Cir. 1967); *West vs. Hydro Test, Inc.*, 196 So. 2d 598 (La. App. 1st Cir. 1967)

Finally, Bradco represents in its petition to this Court that: "All the testimony at the trial revealed that H_2S was

never detected at the well site." (Petition p. 5) "For emphasis, we would like to reiterate that the court found no H_2S in the failed well. . ." (Petition p. 6)

This is directly contrary to the factual findings below. The Fifth Circuit held (Appendix D-2):

> "However, defendant made its case for the presence of H S by the testimony of experts who had examined the failed piping (metallurgically) and had positively tested a replacement well located 400 feet from the original site. From this proof, *the court found that H_2S was present. . .*"

Therefore, it is respectfully submitted that petitioner has failed to demonstrate either factual or legal error in the decision below. Certainly, no showing is made that the Fifth Circuit's decision is in any way in conflict with applicable Louisiana law.

Accordingly, it is respectfully submitted that there is no reason shown by petitioner why a review on writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing brief on behalf of Defendant, Youngstown Sheet & Tube Company has been served on plaintiff through its attorneys of record, Mr. Fred A. Collins, 1350 One Allen Center, Houston, Texas 77002, Mr. Joseph L. Waitz, P. O. Box 590, Houma, Louisiana 70360, and Mr. Ray Carlton Muirhead, 9800 Northwest Freeway, Houston, Texas 77018, by depositing a copy of same in the United States Mail, postage prepaid, this 11th day of February, 1977.

JOHN V. BAUS